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Error to Circuit Court, Amherst County.

Action by Harvey F. Kidd against Clinton De Witt, Jr. Judgment for defendant, and plaintiff brings error. Affirmed.

J. T. Coleman, Jr., of Lynchburg, for plaintiff in error.

Caskie & Caskie, of Lynchburg, for defendant in error.

STRADER v. METROPOLITAN LIFE INS. CO.

Sept. 16, 1920.

[105 S. E. 74.]

1. Executors and Administrators (§ 43*)—Title to Personal Passes to Personal Representative.—Goods, chattels, and sums of money all pass to the personal representative, and he alone has title in law to them, and legatee cannot take anything bequeathed to him without the personal representative's assent.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 516.]

2. Wills (§ 748*)—Legatee Cannot Sue to Recover Legacy without Consent of Representative.—Since title to personal property passes to the personal representative of a decedent, a legatee cannot maintain an action at law against a third person to recover the property bequeathed, notwithstanding that the estate has no debts.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 516.]

3. Insurance (§ 637*)—Pleading, Held Not Sufficient to Show Plaintiff Was Complete Owner of Policy.—In an action against an insurance company, assignee of a half interest in a life policy and by legatee of the other half, insurance being payable to decedent's estate, allegations that decedent "parted this life owing no debts, and, after making a will which has been duly probated, * * * he did leave and bequeath unto the said plaintiff the other one-half of policy of insurance, and whereby she, the said plaintiff, became and is the sole beneficiary under the said policy, and the complete owner thereof," held not to sufficiently charge that plaintiff was the complete owner of the chose in action sued upon, either by importing that the personal assent of the personal representative had been secured, or by allowing the presumption of such assent from plaintiff's possession of the policy.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 520.]

4. Wills (§ 748*)—Legatee of Personalty May Sue at Law to Recover It with Consent of Personal Representative.—A personal representative in the due course of administration may turn over to the

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

legatee the specific thing bequeathed to him, thereby completing the title of the legatee to the legacy, and affording him the right to bring an action to recover the same from a third person.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 516.]

5. Pleading (§ 48*)—Declaration Must State Plaintiff's Case.—Although it is not necessary in a pleading to state that which is merely a matter of evidence, a declaration must state the plaintiff's case, either in detail or by sufficient general allegation.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 218.]

6 Wills (§ 748*)—Legatee Cannot Recover Personalty Bequeathed from Third Person without Consent of Personal Representative.—Code 1904, § 2860, which provides that the assignee or beneficial owner of a chose in action not negotiable may maintain an action thereon in his own name, was not intended to overthrow the rule of law that, in case of death, the personal estate of the decedent passes to the personal representative, and that he alone has title in law to them, and to afford to the legatee a right of action at law to collect a debt belonging to the estate of the testator without first deriving title from the personal representative.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 516.]

7. Pleading (§ 225 (2)*)—Permission to Amend Should Be Given on Sustaining Demurrer if Case Can Be Stated.—On sustaining a demurrer to the plaintiff's declaration, opportunity to make an amendment should be afforded if by proper amendment the plaintiff can state a case upon the facts entitling him to maintain an action at law.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 344.]

Error to Circuit Court, Wise County.

Action by Lou L. Strader against the Metropolitan Life Insurance Company. Judgment for defendant, and plaintiff brings error. Affirmed in part and remanded.

W. B. Snidow, of Pearisburg, for plaintiff in error.

Jackson & Henson, of Roanoke, and *Bernard Mason*, of Pearisburg, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.